

**United States Department of Labor  
Employees' Compensation Appeals Board**

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**A.W., Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
Romeo, MI, Employer**

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**Docket No. 19-0327  
Issued: July 19, 2019**

*Appearances:*  
*Appellant, pro se*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

CHRISTOPHER J. GODFREY, Chief Judge  
JANICE B. ASKIN, Judge  
ALEC J. KOROMILAS, Alternate Judge

**JURISDICTION**

On November 26, 2018 appellant filed a timely appeal from a June 22, 2018 merit decision and a September 26, 2018 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.<sup>2</sup>

**ISSUES**

The issues are: (1) whether appellant has met her burden of proof to establish a right arm condition causally related to the accepted April 30, 2018 employment incident; and (2) whether

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

<sup>2</sup> The Board notes that appellant submitted additional evidence on appeal. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

OWCP properly denied appellant's request for reconsideration of the merits of her claim pursuant to 5 U.S.C. § 8128(a).

### **FACTUAL HISTORY**

On May 2, 2018 appellant, then a 33-year-old mail clerk, filed a traumatic injury claim (Form CA-1) alleging that on April 30, 2018 she sustained a right arm condition after throwing over a thousand parcels of mail while in the performance of duty. She stopped work on May 2, 2018 and returned to limited-duty work on May 3, 2018.

In a May 2, 2018 attending physician's report (Form CA-20) Dr. Susan A. Bidigare, a Board-certified family practitioner, reported that appellant was moving packages and felt pain in her right shoulder and upper arm. She diagnosed a right shoulder strain and indicated by checking a box marked "yes" that the condition was caused or aggravated by the described employment activity. In an accompanying May 2, 2018 duty status report (Form CA-17) Dr. Bidigare diagnosed a right shoulder strain due to an April 30, 2019 incident and indicated that appellant could return to work on May 2, 2018 with restrictions.

In a May 4, 2018 report, Cherise A. Short, a certified physician assistant, diagnosed right arm strain. She indicated that appellant was working modified activity and that such restricted activity was in effect until the next physician visit. In another May 4, 2018 report, Ms. Short noted a date of injury of April 30, 2018 and provided an assessment of right shoulder strain and strain of the right trapezius muscle. This report was also countersigned by an osteopathic physician, but the signature is illegible.

In a May 4, 2018 duty status report (Form CA-17) Dr. James W. Collins, a specialist in emergency medicine, related that appellant's cervical, trapezius, and right shoulder strains were due to sorting parcels on April 30, 2018.

In a development letter dated May 14, 2018, OWCP informed appellant that the evidence of record was insufficient to establish her traumatic injury claim. Appellant was advised of the type of factual and medical evidence needed to establish her claim and was afforded 30 days to submit the necessary evidence.

In response, OWCP received a May 10, 2018 offer of modified assignment and copies of physical therapy reports dated from May 4 to 24, 2018.

OWCP also received a May 2, 2018 report from Dr. Bidigare. Dr. Bidigare related that appellant's injury occurred on April 30, 2018 while lifting and sorting packages while at work. She noted examination findings and provided an assessment of right shoulder strain. Appellant was placed on modified work activity and referred to physical therapy.

In a May 10, 2018 report, Dr. Collins noted appellant's right shoulder examination findings and provided an assessment of right shoulder strain and strain of her right trapezius muscle. He also provided a May 10, 2018 work activity status report noting appellant's work restrictions.

In a May 17, 2018 report, Dr. Zaid Hanoudi, a Board-certified family practitioner, noted appellant's April 30, 2018 date of injury and diagnosed a right shoulder strain and right trapezius muscle strain. He recommended that appellant continue performing modified duty.

On May 24, 2018 Dr. Collins released appellant from care and advised that she could return to full work activity.

By decision dated June 22, 2018, OWCP denied appellant's claim finding that the medical evidence of record was insufficient to establish that the diagnosed medical conditions were causally related to the accepted employment incident.

On August 27, 2018 appellant requested reconsideration. Physical therapy reports were received which summarized appellant's May 2018 physical therapy sessions.

Appellant also resubmitted a number of reports, including a May 4, 2018 report from Ms. Short, a May 10, 2018 report from Dr. Collins, and a May 17, 2018 report from Dr. Hanoudi.

By decision dated September 26, 2018, OWCP denied appellant's request for reconsideration.

### **LEGAL PRECEDENT -- ISSUE 1**

An employee seeking benefits under FECA has the burden of proof to establish the essential elements of his or her claim, including the fact that the individual is an employee of the United States within the meaning of FECA,<sup>3</sup> that the claim was filed within the applicable time limitation, that an injury was sustained while in the performance of duty as alleged, and that any disability or specific condition for which compensation is claimed is causally related to the employment injury.<sup>4</sup> These are the essential elements of every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.<sup>5</sup>

In order to determine whether an employee actually sustained an injury in the performance of duty, OWCP begins with an analysis of whether fact of injury has been established. Fact of injury consists of two components which must be considered in conjunction with one another. The first component to be established is that the employee actually experienced the employment

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<sup>3</sup> *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

<sup>4</sup> *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

<sup>5</sup> *K.M.*, Docket No. 15-1660 (issued September 16, 2016); *L.M.*, Docket No. 13-1402 (issued February 7, 2014); *Delores C. Ellyett*, 41 ECAB 992 (1990).

incident which is alleged to have occurred.<sup>6</sup> The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence.<sup>7</sup>

To establish causal relationship between the condition, as well as any attendant disability claimed and the employment event or incident, the employee must submit rationalized medical opinion evidence supporting such causal relationship.<sup>8</sup> Causal relationship is a medical issue, and the medical evidence required to establish causal relationship is rationalized medical evidence.<sup>9</sup> The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the employee.<sup>10</sup> Neither the mere fact that a disease or condition manifests itself during a period of employment, nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.<sup>11</sup>

### **ANALYSIS -- ISSUE 1**

The Board finds that appellant has not met her burden of proof to establish a right arm condition causally related to the accepted April 30, 2018 employment incident.

OWCP received May 2, 2018 reports from Dr. Bidigare, who diagnosed a right shoulder strain due to the April 30, 2018 employment incident and placed appellant on modified work activity. Dr. Bidigare indicated by checking a box marked “yes” on her Form CA-20 attending physician’s report, that appellant’s injury was causally related to moving packages while in the performance of duty. The Board has held that a physician’s opinion on causal relationship which consists only of checking a box marked “yes” to a form question, without explanation or rationale, is of diminished probative value and is insufficient to establish a claim.<sup>12</sup> Dr. Bidigare provided no medical rationale in any of her reports explaining how the accepted employment activity caused, contributed to, or aggravated appellant’s diagnosed right shoulder strain. To be of probative medical value, a medical opinion must explain how physiologically the movements

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<sup>6</sup> See *P.F.*, Docket No. 18-0973 (issued January 22, 2019); see also *Elaine Pendleton*, 40 ECAB 1143 (1989).

<sup>7</sup> *M.H.*, Docket No. 18-1737 (issued March 13, 2019); *John J. Carlone*, 41 ECAB 354 (1989).

<sup>8</sup> *J.L.*, Docket No. 18-0698 (issued November 5, 2018); *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 465 (2005).

<sup>9</sup> *L.D.*, Docket No. 17-1581 (issued January 23, 2018); *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

<sup>10</sup> *L.D.*, *id.*; see also *Leslie C. Moore*, 52 ECAB 132 (2000); *Gary L. Fowler*, 45 ECAB 365 (1994).

<sup>11</sup> *T.H.*, Docket No. 18-1736 (issued March 13, 2019); *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

<sup>12</sup> See *M.D.*, Docket No. 18-0195 (issued September 13, 2018); *M.W.*, Docket No. 17-1063 (issued November 2, 2017).

involved in the employment incident caused or contributed to the diagnosed conditions.<sup>13</sup> As such, Dr. Bidigare's reports are insufficient to establish causal relationship.

Dr. Collins and Dr. Hanoudi diagnosed a right shoulder strain and a right trapezius muscle strain and provided medical restrictions. While they reported an April 30, 2018 date of injury, neither physician offered a history of the employment incident or an opinion regarding causal relationship. The Board has held that medical evidence that does not offer an opinion regarding the cause of an employee's condition is of no probative value on the issue of causal relationship.<sup>14</sup> As the reports of Dr. Collins and Dr. Hanoudi are deficient in this regard, their reports are of no probative value and are insufficient to establish appellant's claim.

Physical therapy reports and reports from a physician assistant, were also received. Certain healthcare providers such as physician assistants and physical therapists are not considered "physician[s]" as defined under FECA.<sup>15</sup> Consequently, their medical findings and/or opinions will not suffice for purposes of establishing entitlement to FECA benefits.<sup>16</sup> If their findings and opinions are countersigned by a physician, they can be considered probative evidence.<sup>17</sup> A May 4, 2018 report from Ms. Short was countersigned by a physician, but the physician's signature was illegible. The Board has held that a report that bears an illegible signature cannot be considered probative medical evidence because it lacks proper identification.<sup>18</sup> Thus, this report has no probative value.

Because the medical reports of record do not establish that the April 30, 2018 employment incident caused a right arm condition, the evidence of record is insufficient to establish entitlement to compensation under FECA.<sup>19</sup> Accordingly, appellant has not met her burden of proof.

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

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<sup>13</sup> *D.B.*, Docket No. 18-1359 (issued May 14, 2019).

<sup>14</sup> *See W.M.*, Docket No. 19-0013 (issued April 11, 2019); *L.B.*, Docket No. 18-0533 (issued August 27, 2018).

<sup>15</sup> 5 U.S.C. § 8102(2) of FECA provides as follows: (2) physician includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law. *See also Roy L. Humphrey*, 57 ECAB 238 (2005); *David P. Sawchuk*, 57 ECAB 316, 320 n.11 (2006) (lay individuals such as physician assistants, nurses, and physical therapists are not competent to render a medical opinion under FECA); 5 U.S.C. § 8101(2); 20 C.F.R. § 10.5(t). *George H. Clark*, 56 ECAB 162 (2004) (physician assistant); *Jane A. White*, 34 ECAB 515, 518 (1983) (physical therapist).

<sup>16</sup> *See K.C.*, Docket No. 18-1330 (issued March 11, 2019); *K.W.*, 59 ECAB 271, 279 (2007).

<sup>17</sup> *Id.*

<sup>18</sup> *See K.C.*, *supra* note 16; *R.M.*, 59 ECAB 690 (2008); *D.D.*, 57 ECAB 734 (2006); *Richard J. Charot*, 43 ECAB 357 (1991).

<sup>19</sup> *See J.L.*, Docket No. 18-1804 (issued April 12, 2019); *D.H.*, Docket No. 17-1913 (issued December 13, 2018); *see Linda I. Sprague*, 48 ECAB 386 (1997).

## **LEGAL PRECEDENT -- ISSUE 2**

Section 8128(a) of FECA does not entitle a claimant to review of an OWCP decision as a matter of right.<sup>20</sup> OWCP has discretionary authority in this regard and has imposed certain limitations in exercising its authority.<sup>21</sup> One such limitation is that the request for reconsideration must be received by OWCP within one year of the date of the decision for which review is sought.<sup>22</sup>

A timely application for reconsideration, including all supporting documents, must set forth arguments and contain evidence that either: (1) shows that OWCP erroneously applied or interpreted a specific point of law; (2) advances a relevant legal argument not previously considered by OWCP; or (3) constitutes relevant and pertinent new evidence not previously considered by OWCP.<sup>23</sup> Section 10.608(b) of OWCP regulations provide that when an application for reconsideration does not meet at least one of the three requirements enumerated under section 10.606(b)(3), OWCP will deny the application for reconsideration without reopening the case for a review on the merits.<sup>24</sup>

## **ANALYSIS -- ISSUE 2**

The Board finds that OWCP properly denied appellant's request for reconsideration of the merits of her claim pursuant to 5 U.S.C. § 8128(a).

In her timely application for reconsideration, appellant did not show that OWCP erroneously applied or interpreted a specific point of law, nor did she advance a new and relevant legal argument not previously considered.<sup>25</sup> Consequently, she is not entitled to review of the merits of her claim based on the first and second above-noted requirements under 20 C.F.R. § 10.606(b)(3).

Furthermore, appellant failed to submit relevant and pertinent new evidence in support of her request for reconsideration.<sup>26</sup> She submitted additional physical therapy reports. However,

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<sup>20</sup> This section provides in pertinent part: the Secretary of Labor may review an award for or against payment of compensation at any time on his own motion or on application. 5 U.S.C. § 8128(a).

<sup>21</sup> 20 C.F.R. § 10.607.

<sup>22</sup> *Id.* at § 10.607(a). For merit decisions issued on or after August 29, 2011, a request for reconsideration must be received by OWCP within one year of OWCP's decision for which review is sought. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.4 (February 2016). Timeliness is determined by the document receipt date of the request for reconsideration as indicated by the received date in the integrated Federal Employees Compensation System (iFECS). Chapter 2.1602.4b.

<sup>23</sup> 20 C.F.R. § 10.606(b)(3); *J.B.*, Docket No. 18-1531 (issued April 11, 2019); *D.K.*, 59 ECAB 141 (2007).

<sup>24</sup> *Id.* at § 10.608; *P.H.*, Docket No. 18-1020 (issued November 1, 2018); *K.H.*, 59 ECAB 495 (2008).

<sup>25</sup> *R.R.*, Docket No. 18-1562 (issued February 22, 2019); *Sherry A. Hunt*, 49 ECAB 467 (1998).

<sup>26</sup> *See J.B.*, Docket No. 18-1531 (issued April 11, 2019); *M.C.*, Docket No. 14-0021 (issued March 11, 2014).

these reports were not countersigned by a physician and thus have no probative medical value.<sup>27</sup> As the underlying issue is medical in nature,<sup>28</sup> these reports are of no relevance to the issue of causal relationship and do not establish a basis for reopening the case for merit review.<sup>29</sup>

OWCP also received duplicative reports from Dr. Collins, Dr. Hanoudi and Ms. Short. Submitting evidence that repeats or duplicates evidence already in the case record does not constitute a basis for reopening a case.<sup>30</sup> Thus, appellant is also not entitled to a review of the merits of her claim based on the third above-noted requirement under section 10.606(b)(3).<sup>31</sup>

The Board accordingly finds that appellant has not met any of the requirements of 20 C.F.R. § 10.606(b)(3). Pursuant to 20 C.F.R. § 10.608, OWCP properly denied merit review.

### **CONCLUSION**

The Board finds that appellant has not met her burden of proof to establish a right arm condition causally related to the accepted April 30, 2018 employment incident. The Board also finds that OWCP properly denied appellant's request for reconsideration of the merits of her claim pursuant to 5 U.S.C. § 8128(a).

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<sup>27</sup> See *K.J.*, Docket No. 16-0611 (issued May 13, 2016).

<sup>28</sup> *Id.*; *Carol A. Lyles*, 57 ECAB 265 (2005) (causal relationship is a medical issue which must be resolved by competent medical opinion).

<sup>29</sup> *Id.*; *Joseph A. Brown, Jr.*, 55 ECAB 542 (2004).

<sup>30</sup> *O.C.*, Docket No. 19-0106 (issued April 26, 2019).

<sup>31</sup> *H.H.*, Docket No. 18-1660 (issued March 14, 2019).

**ORDER**

**IT IS HEREBY ORDERED THAT** the September 26 and June 22, 2018 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: July 19, 2019  
Washington, DC

Christopher J. Godfrey, Chief Judge  
Employees' Compensation Appeals Board

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge  
Employees' Compensation Appeals Board